

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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IN THE

**United States Court of Appeals
for the District of Columbia**

APRIL TERM, 1935

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No. 6481

UNITED STATES EX REL ETHEL EURE, *Appellant*

VS.

FANNIE BORDEN, *Appellee*

BRIEF OF APPELLEE

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STATEMENT OF CASE

This is an appeal from a judgment of the Supreme Court of the District of Columbia granting appellee's motion to quash the writ of certiorari issued out of the lower court November 17, 1934, the vacation of and the setting aside of the writ and judgment. (Rec. p. 13)

The appellant, who was the plaintiff below, on the 20th day of March, 1934, filed suit No. 285-364, in the Municipal Court of the District of Columbia, against the appellee, who was the defendant below, claiming \$500.00 as damages caused through the alleged negligence of the defendant. Plaintiff took a voluntary non-suit before trial but after the defendant announced herself ready for trial.

On June 14th, 1934, the plaintiff filed her second suit No. 291-887 in the Municipal Court against the defendant for the same amount and cause. On August 15th, 1934, this second suit was tried, and at the conclusion of the plaintiff's case—all the testimony having been offered by the plaintiff—the defendant moved the Court for a dismissal of said cause on the ground that the plaintiff failed to make out a case; that the testimony offered by the plaintiff did not support the allegations of plaintiff's bill; there being a wide variance. The trial court so found but instead of granting defendant's motion, allowed plaintiff to take a voluntary non-suit.

On August 22nd, 1934, the plaintiff herein filed her third suit No. A-10,760 in the Municipal Court against the defendant for the same cause but for \$1,000.00, to which the defendant filed a general demurrer and later a motion to dismiss. The Court dismissed this suit of its own motion on the ground of res judicata as this suit was against the same parties, for the same cause of action and the matters in issue being tried by trial in the former suit and a determination or judgment being made thereon.

The plaintiff thereupon applied to the Supreme Court of the District of Columbia for a writ of certiorari, (Rec. p. 1) which writ was issued November 17th, 1934. (Rec. p. 4) Defendant filed a motion November 26th, 1934, for a quashal of the writ, (Rec. p. 13) which

motion was granted February 11th, 1935 and the writ vacated. (Rec. p. 13)

The plaintiff then filed a motion for a second or amended writ of certiorari, and after argument of counsel representing both parties, the motion was denied. (Rec. p. 14)

THE QUESTION PRESENTED

The question here presented is whether or not the Supreme Court of the District ruled correctly in granting the appellee's motion to quash the writ of certiorari on the ground that the Supreme Court of the District lacked jurisdiction to review the record of the proceedings of the cause as filed and determined in the Municipal Court, in view of the Act of March 3, 1921, providing an efficient and speedy method of appeal directly from the Municipal Court to the United States Court of Appeals. Appellee holds that the ruling of the lower court was correct, although the ruling is of far more reaching effect than at first indicated.

While the question of jurisdiction of the trial judge of the Municipal Court in dismissing the cause was raised by appellant in the Court below, the record is silent as to what, if any, consideration was given by the court below as to this phase of the question, but as the record does show the motion of quashal was granted,—and presumably for the reason that the Supreme Court of the District was without jurisdiction because of the adequate remedy by appeal directly to this Court as provided for by the Act of March 3, 1921, aforesaid,—it may be that the ruling was limited to this reason. The court too may have vacated the writ in the exercise of its judicial discretion. However, it can be assumed the court below also found that there

was no excess of or want of jurisdiction on the part of the Municipal Court in its disposition of the cause, but in the absence of any specific ruling as to these points, appellee holds that this side of the question is still open and therefore moot in so far as the court below ruled on the question, and while it is true that the court below did not necessarily have to give any reason for its action in quashing the writ, yet, as the reason or reasons for the ruling are not clear, in so far as the record is concerned, appellee contends that the question in reality is dualistic and that all the matters raised pro and con as to the jurisdiction of the Court below are now subject to a ruling by this Court, especially when it is considered that the Court below may have taken into consideration every jurisdictional phase in its action in granting the motion aforesaid, and the record not being clear as to any specific reason for vacating the writ.

If the court below did take under advisement all the jurisdictional matters, it necessarily took into consideration the want of or excess of jurisdiction of the Municipal Court in the original proceeding, and if by inference alone, it can be contended that the lower court considered the question of jurisdiction in its entirety, and the court below, in view of all the jurisdictional matters raised held that because of the method provided for direct appeal from the Municipal Court to this Court, it did not have any jurisdiction over the case, then the decision of the lower court recognizes that it is without jurisdiction in any action instituted in the Municipal Court. By this reasoning, therefore, the question in its entirety elevates the question to one of great importance in this jurisdiction.

Appellee holds that the court below properly granted her motion to quash the writ of certiorari as a

cause, and no property right could be established and fixed until either the Court or jury assessed damages in favor of the appellant, and it is only after such a finding could it be said that a property right exists. No such rights exist in this jurisdiction in this character of case prior to a judicial determination, as the appellant herself cannot create such a right, and before a judicial determination of her case, her suit amounts to nothing more than a series of allegations. Under Sec. 121 of Ch. 6 of Title 24, p. 326 of the code, property rights in certain classes of cases are designated, but no such right exists in favor of the appellant until after a court or jury so finds.

As to the tenth assignment, no comment is necessary.

As to the ninth assignment, appellant had a remedy by appeal to this court, as is provided by the Act of Congress, approved March 3, 1921, (41 Stat. L. pt. 1, pp. 1310-12) and rule XXIX of this Court promulgated in pursuance of the Act, and as her fourth assignment counters her ninth, the fourth assignment is the only one over which we are concerned, and as heretofore stated, this question being dualistic, both points will be argued concurrently rather than by a separate treatment of each.

JURISDICTION OF OUR LOCAL COURTS

By the Act of March 3, 1901, (31 Stat. 1189) creating a code of law for the District of Columbia, it is provided by sec. 1, ch. 1, that—

“the common law, all British statutes in force in Maryland on the 27th day of February, 1801,
* * * shall remain in force except in so far as

the same are inconsistent with, or are replaced by, some provision of this code.”

Under sec. 2, it is further provided that—

“the judicial power in the District shall continue as at present to be vested in — First: Inferior Courts, namely, justices of the peace, * * *.”

Sec. 8, provided that—

“the Supreme Court of the District of Columbia in general term shall make rules regulating the practice and pleading before justices of the peace, and in relation to appeals from their judgments, not inconsistent with law * * * . Provided. That in all cases of concurrent jurisdiction the defendant may remove the case for trial into the Supreme Court of the District by a writ of certiorari * * * .”

Sec. 9. Jurisdiction—

“The said justices of the peace shall have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contract, express or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, * * * and said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed fifty dollars, and concurrent with the Supreme Court when it exceeds fifty dollars.”

By the Act of Feb. 17, 1909, (35 Stat. 623) changing the name of this inferior court from Justice of the Peace to the Municipal Court of the District of Columbia, the jurisdiction of this Court was increased from \$300. to \$500. in the

“class of cases over which it had jurisdiction immediately prior to the passage of this act; that said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed one hundred dollars, and concurrent with the Supreme Court of the District of Columbia when it exceeds one hundred dollars and is not in excess of \$500., with the same right to remove any case by certiorari, as heretofore, in cases of concurrent jurisdiction.”

By these two Acts and up to the time of the approval of the Act of March 3, 1921, the Supreme Court of the District, in addition to the authority to issue the common law writ of certiorari, also had the vested authority to issue the statutory writ of certiorari in cases in which it had concurrent jurisdiction with the Municipal Court. Up to March of 1921, the Supreme Court of the District had appellate jurisdiction over cases in the Municipal Court and no question can be raised as to the supervisory power the Supreme Court of the District had over the Municipal Court by reason of its appellate jurisdiction. Aside from the statutory writ, no definite provision was made by statute prescribing the functions of or regulating the procedure by, certiorari in this jurisdiction, so that we necessarily are obliged to resort to the common law for its purpose. 31 Stat. 1191. *Degge vs. Hitchcock*, 35 App. (D.C.) 218.

While the Supreme Court of the District still has the power to issue the common law writ of certiorari, yet this prerogative has been greatly limited in recent years and now is applicable only in special instances and will lie only to inferior courts or special tribunals exercising judicial or quasi judicial functions, such as special officers and boards. (*Degge vs. Hitchcock*, (su-

pra) District of Columbia vs Brooke, 29 App. (D.C.) 563.

The purpose of the writ is to bring the proceedings of these inferior courts and special tribunals into the Supreme Court of the District for review as to the jurisdiction of the subject-matter or to ascertain whether or not its jurisdiction had been exceeded, or whether a party aggrieved had been deprived of a right or a burden was imposed upon him or his property, without due process of law. It is in the nature of a writ of error, but it does not, like the latter, go to errors of judgment that may have been committed in the process of the exercise of an existent jurisdiction. Harris vs. Barber, 129 U. S. 366-372.

However, by the Act of March 3, 1921, (41 Stat. 1310) the jurisdiction of the Municipal Court was again enlarged, this court being given exclusive jurisdiction in civil cases—

“in which the claimed value of personal property or the debt or damages claimed * * * does not exceed \$1,000., namely, in the classes of cases over which the court had jurisdiction immediately prior to the passage of this Act, and in actions for the recovery of damages for assault, assault and battery, slander, libel, malicious prosecution and breach of promise to marry.”

It is also provided by this Act that—

“the concurrent jurisdiction of the Supreme Court of the District of Columbia in any such case and the right to remove such cases to said Supreme Court by the statutory writ of certiorari, are hereby abolished, and * * * That hereafter no appeal shall lie from the Municipal Court to the Supreme Court of the District of Columbia. If in any case in the Municipal Court an exception

is taken by any party to any ruling or instruction of the Court on matter of law the exception shall be reduced to writing and stated in a bill of exceptions with so much of the evidence as may be material to the question or questions raised, and such bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by the rules of said court. Any party aggrieved by any final judgment of said court may seek a review thereof by the Court of Appeals of the District of Columbia by petition under oath setting forth concisely but clearly and distinctly the nature of the proceeding in said court, the trial and judgment therein and the particular ruling or instruction upon matter of law to which exception has been taken, said petition to be presented to any Justice of the Court of Appeals within ten days after entry of such judgment and with such notice to the opposite party as may be required by rules of said Court of Appeals. If the justice shall be of opinion that such judgment ought to be reviewed a writ of error shall be issued from the Court of Appeals to the Municipal Court which shall send to the Court of Appeals, within such time as may be prescribed by that Court, a transcript of the record in the case sought to be reviewed; and the Court of Appeals shall review said record and affirm, review, or modify the judgment in compliance with law. * * *

Here we find the repeal of the statutory writ, and as nothing further is said as to the writ, the Supreme Court of the District still has the power to issue the common law writ in certain cases, *not inconsistent with or replaced by law.*

Congress also by this Act made the Municipal Court a Court of Record, giving it exclusive jurisdiction in certain classes of cases, and answerable only to the United States Court of Appeals. *Appellee maintains that any supervisory power heretofore existent*

or exercised by the Supreme Court of the District over the Municipal Court was by this Act repealed, with the exception of its power to issue an injunction or restraining order staying a pending proceeding in said Municipal Court because of some issue in said proceeding being involved in or allied to a cause pending in said Supreme Court of the District, and its power to hear charges of misconduct of any judge of said court and to remove him from office for cause shown. Title 18, c. 3. s. 51, p. 162, D. C. Code.

Pursuant to the Act of March, 1921, this Court promulgated Rule XXIX governing the review of judgments from the Municipal Court, in part as follows:

“A party applying for a writ of error to the Municipal Court * * * shall immediately after filing his application in this court give notice to the other party interested in the filing of the same * * * .

In the event of the denial of the application for a writ of error by any justice of this court the clerk shall, in writing, notify the Clerk of the Municipal Court of such denial.

The writ of error when allowed shall be issued by the clerk and shall be directed to the judge of the Municipal Court who tried the case and made the rulings excepted to. Upon receipt of the writ by the clerk of that court, he shall at once issue notice to the defendant in error, or his counsel, notifying him of the allowance of the writ, and that he be required to appear in this court to defend and maintain the rights of the defendant in error, * * * . When a writ of error is issued it shall be the duty of the plaintiff in error * * * to produce and file with the clerk of this court a transcript of record of the case, certified under the seal of the Municipal Court * * * . The clerk of this court upon the receipt of the

transcript of record from the Municipal Court shall docket the case, in regular order of reception, on the general docket. * * * ”

CERTIORARI AND APPEAL

Certiorari is a common-law prerogative writ issued from a superior court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case. It is an extraordinary remedy resorted to for supplying defects of justice in cases obviously entitled to redress, and yet unprovided for by the ordinary forms of proceedings. The purpose of the writ is twofold;

- (a) as an appellate proceeding for the re-examination of some action of an inferior tribunal, and
- (b) as an auxiliary process to enable the court to obtain further information in respect to some matter already before it for adjudication.

The usual, and in some jurisdictions the only, office of the writ is to inquire into and review determinations made without jurisdiction or in excess of the jurisdiction conferred. *Maury vs. Hitchcock*, 35 App. (D. C.) 228. *Degge vs. Hitchcock*, (supra) *Zinkham vs. Linaweaver*, 34 App. (D. C.) 19. *U. S. vs. West*, 34 App. (D. C.) 12.

The general rule is that the writ does not lie if there is an adequate remedy by appeal, writ of error or exceptions. This rule, however, is modified in some states where there is want or excess of jurisdiction, and it has been expressly held in the District of Columbia that want or excess of jurisdiction is ground for the writ, although appeal lies. *U. S. vs. West* (supra) and *Zinkham vs. Linaweaver*, (supra).

As the *U. S. vs. West* case affected another inferior court and one of very limited jurisdiction, and decided this question some 25 years ago, and the Municipal Court of the District since having its jurisdiction increased and the making of that court a court of record, appellee seriously doubts that the Supreme Court of the District in view of the Act of March 3, 1921, would now issue the common law writ of certiorari in cases filed in the Municipal Court where that court was without jurisdiction or where it exceeded its jurisdiction.

Although the granting or refusal of the writ rests in the sound judicial discretion of the court, it may be stated as a general proposition that the writ will be refused where there is another adequate remedy open to the petitioner for review. *Universal Motor Truck Co. vs. Universal Motor Co.* 41 App. (D.C.) 261. *Mark vs D. C.* 35 App. (D.C.) 574. *Georgetown Pres. Church vs. D. C.* 34 App. (D.C.) 600.

Except where made so by statute, certiorari is not a writ of right, but issues only on special cause shown to the Court to which application is made, and the court is vested with judicial discretion to grant or refuse the writ as justice may seem to require. *D. of C. vs. Witner*, 39 App. (D.C.) 334. *Mark vs. D. C.* (supra). *Georgetown Pres. Church vs. D. C.* (Supra). *D. C. vs. Brooke*, 29 App. (D.C.) 563.

This rule applies equally well where want or excess of jurisdiction is the ground for the writ. *Billings vs. Field*, 36 App. (D.C.) 16. It is a rule of almost universal application that the writ will not issue in those cases in which there is a plain, speedy and adequate remedy by appeal, (*Billings vs. Field*, supra. *Barber vs. Harris*, 18 App. D. C. 586. *D. of C. vs Wash. Gas Lt. Co.* 14 App. D. C. 343), or writ of error. *Brawshaw vs. Earnshaw*, 11 App. (D.C.) 495.

erly issued by the Supreme Court of the District."

While the instant case is not at all parallel to the West case because the Municipal Court did have jurisdiction over the parties and subject-matter, yet had the Municipal Court lacked jurisdiction, it may be that this Court would hold as in the West case that "the writ can be substituted for an appeal," although *appellee contends that in as much as the Municipal Court is now a court of record and adequate provision is made for appeal, as heretofore shown, this Court alone has the right to determine the question of want or excess of jurisdiction.*

In the case of *Billings vs. Field* (supra) which was an appeal from a judgment of the Supreme Court of the District in a certiorari proceeding quashing a decision of the Commissioner of Patents, which revived a patent application filed by Howard N. Colman, and also quashing an interlocutory proceeding between Colman and the appellee Field, and granting certain incidental relief, this Court held that if "there is another adequate remedy available, the writ will not be granted." This was also held in *Georgetown Pres. Church vs. D. C.*, (supra). *Mark vs. D. C.* (supra). *Universal Motor Truck Co. vs. Universal Motor Co.* (supra).

The points raised in this case are probably more germane to the points involved in the instant case than any other decided in this jurisdiction, as by the Act of Feb. 9, 1893, (27 Stat. at L. 434) creating our Appellate Court, the jurisdiction of the general term of the Supreme Court of the District over appeals from the Commissioner of Patents was transferred to our Appellate Court, with the provision that "any party aggrieved by a decision of the Commissioner of

Patents in an interference case may appeal therefrom to said Court of Appeals.”

This is exactly what Congress did when it passed the Act of March 3, 1921, enlarging the jurisdiction of the Municipal Court and making it a court of record and providing a method of appeal directly to this Court. By this Act the appellate jurisdiction of this Court was increased or extended and at the same time the appellate jurisdiction of the Supreme Court of the District over the Municipal Court was repealed, thereby, appellee contends, *depriving the Supreme Court of the District supervisory control over the Municipal Court, and incidentally, the right to issue the common law writ of certiorari in any proceeding in this inferior court*. Congress, no doubt, had this in mind when it passed this Act as the intent is clear.

This Court stated in the Billings vs. Field case (*supra*) that—

“the only excuse * * * for invoking this common-law remedy is that relief by appeal will be less efficient. We are fully convinced that an appeal will afford as speedy and adequate redress as will be accomplished by certiorari. If proceedings in the Patent Office are to be interrupted by certiorari when there is an equally adequate remedy by appeal it is clear that an additional tribunal not contemplated by the statute, namely, the Supreme Court of the District, will be interposed between the tribunals of the Patent Office and this Court. In other words, instead of appeals coming direct to this Court an aggrieved person by resorting to the writ of certiorari will be enabled to prolong the contest by first taking the case to the Supreme Court. If such a practice should obtain, appeals in every instance would probably be prosecuted from that Court to this, as otherwise, when

parties were sent back to the Patent Office they might find some important if not controlling question finally settled on the certiorari proceeding by a Court having no general jurisdiction over questions arising in the Patent Office. It appearing that an equally efficient remedy by appeal was open to appellee when he filed his petition for the writ of certiorari, the trial Court should have dismissed his petition. The judgment will therefore be revised, and the cause remanded for further proceedings.”

From this ruling, inference is gathered that if the Commissioner of Patents had exceeded his authority in the hearing of a case before him, that this Court is the only tribunal where such ruling might be reviewed, and that a writ of certiorari issuing out of the Supreme Court of the District is not the proper remedy or proceeding for such review, as said Court is absolutely without any jurisdiction over such causes. Should appellee’s interpretation be well-founded, *then she can rightfully assume that where the Municipal Court exceeded its jurisdiction in any case before it, certiorari will not lie as there is by statute provided an equally efficient and adequate remedy by appeal to our Court of Appeals for any redress.*

As stated previously, the Supreme Court of the District still retains the right to issue the common law writ of certiorari, but only in certain cases. Where some board, bureau or other quasi-inferior tribunal is created with no appellate provision, the writ will issue out of the Supreme Court of the District, and the writ is proper to bring up for review the legality of a tax assessment made by a taxing board, or a special assessment imposed to reimburse the municipality for money expended by authority of law upon the property burdened with the assessment, or to re-

view the return of service thereon. D. C. vs. Witmer, 39 App. (D. C.) 334. Degge vs. Hitchcock, 299 U. S. 162, 171. Universal Motor Truck Co. vs. Universal Motor Co. (supra). Mark vs. D. C. (supra) and similar questions.

CONCLUSION

It is respectfully submitted that the lower Court was correct in granting appellee's motion for the quashal of the writ of certiorari and the resultant vacation and setting aside of the writ as there was open to appellant a plain, speedy and adequate remedy by appeal to this Court for any grievance appellant might have presumably suffered by the ruling of the Municipal Court.

If this Court will rule on the second portion of the question, it is further submitted that the Supreme Court of the District is now without jurisdiction to review the record of any proceeding in the Municipal Court through the process of the common law writ of certiorari for the reasons herein before stated, and that it no longer has any discretionary prerogative as to the issuance or non-issuance of the writ insofar as the Municipal Court is concerned.

Respectfully submitted,

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July, 1935.

